IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 433/2003
(Sumer Singh Vs. State of Rajasthan and Another)

Date of Order : 07/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Saluja for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner workman has impugned the award Annex.4 dated 10.2.1999 passed by Labour Court, Jodhpur (for short 'the Labour Court' hereinafter) and seeks a direction to the respondents to reinstate him with full back wages and grant benefit of continuity in service.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the Govt. of Rajasthan through its Labour Department referred an industrial dispute to Labour Court under Section 10 of the Industrial Disputes Act, 1947 (for short 'the I.D. Act" hereinafter) which has been adjudicated by the Labour Court vide impugned award dated 10.2.1999 holding therein that

the retrenchment of the services of the petitioner workman w.e.f. 13.5.1988 by an oral order is improper and illegal. However, instead of directing the reinstatement in service, the Labour Court thought it proper to award a compensation of Rs.16,000/- in lieu of reinstatement.

It is contended by learned counsel for the petitioner that when the retrenchment of the petitioner was found to be in violation of the provisions of I.D. Act, the reinstatement and back wages is the only course open for the Labour Court and not awarding the compensation.

Learned Deputy Government Advocate appearing for the respondents submits that the petitioner workman was not engaged against sanctioned vacant post and he was engaged only as a daily rated worker and even according to the petitioner workman he was engaged on 1.3.1987 and continued upto 12.5.1988 for a period on one year or so and therefore, after a lapse of more than 18 years, the reinstatement cannot be justified and even otherwise in view of recent decision of Hon'ble Supreme Court, even if the violation of I.D. Act is established then also, the compensation is only the relief which can be granted and not the reinstatement.

In State of M.P.and Others Vs. Arjunlal Rajak (supra) Hon'ble Supreme Court held that it is beyond any doubt or dispute that a daily-wager does not hold a post. The Forest

Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act. Concededly, while appointing the respondent, the constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of the Forest Department in the district of Guna which as noticed above stood abolished. It is however, true that while terminating the services of the respondent the appellants had not complied with the mandatory requirements of Section 25-F of the Industrial Disputes Act, and thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that when a project or a scheme or an office itself is abolished relief by way of reinstatement is not granted. Accordingly, keeping in view the fact that the services of the respondent therein were terminated on the

ground that the production unit in which he was working itself had been closed, the Hon'ble Supreme Court awarded monetary compensation of Rs. 10,000/- to the workman.

In Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. And Others, Hon'ble Supreme Court finding the appointment of the workman therein in violation of the U.P. Mahapalika Adhiniyam, 1959, held that since the provisions of the U.P. Industrial Dispute Act, 1947 had not been complied with, instead and in place of issuing a direction for reinstatement of service, interests of justice would be subserved if a compensation of Rs. 30,000/- is directed to be paid.

A Division Bench of this Court in State of Rajasthan & Ors. Vs. Rashid Mohammad (supra) while dealing with a case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.2.1990 and was finally removed on 17.5.1994 and taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs. 50,000/- as compensation for full and final settlement of all his claims while relying on the decisions of Hon'ble Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs.

Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 95, Chandu Lal Vs. The Management of M/s PAN American World Airways, AIR, 1985 SC 1128, Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra, AIR 1994 SC 112, Sain Steel Products Vs. Naipal Singh and Ors. AIR 2001 SCW 2426, O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. and Ors. (1986) 4 SCC 337 and Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court and Ors. AIR 1994 SC 131.

In the instant case, the workman was not appointed on regular sanctioned post but was appointed on daily wages basis. However, finding that the workman has completed 240 days in an year and without complying with the provisions of Section 25-F of the ID Act, his services have been terminated, therefore, the Industrial Tribunal found that the termination of services of the workman was illegal. In the circumstances, therefore, since the workman was not appointed against a regular sanctioned post, therefore, the Industrial Tribunal was justified in awarding lump sum compensation in lieu of reinstatement finding that the provisions of the I.D. Act have not been complied with while terminating the services of the workman. However, in the facts and circumstances of the case and looking to the length of services rendered by the workman,

in my view, the compensation awarded by the tribunal appears to be on lower side and therefore, it deserves to be enhanced from Rs. 16,000/- to Rs. 40,000/-.

In view of the aforesaid discussion and keeping in view the decisions of Hon'ble Supreme Court referred herein above, the writ petition filed by the petitioner workman is partly allowed and the impugned award dated 10.2.2001 is modified to the extent that the compensation awarded by the tribunal is enhanced from Rs.16,000/- to Rs. 40000/-. There shall be no order as to costs.

(H.R.PANWAR),J.

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